

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER,

Plaintiff,

v.

DETECTIVE SHARON KRAUSE, and  
SERGEANT MICHAEL DAVIDSON,

Defendants.

No. C11-5424BHS

[Proposed]

ORDER ON PLAINTIFF'S  
MOTION FOR ATTORNEYS'  
FEES AND COSTS

THIS MATTER comes before the Court on Plaintiff Clyde Ray Spencer's motion for attorneys' fees and costs (dkt. 277). Having reviewed the motion and all materials filed in support and opposition, and having considered each of the *Hensley* factors, the Court now GRANTS the motion as set forth below.

**Findings of Fact & Conclusions of Law**

1. This civil rights case came before the Court for a four-week jury trial, including 16 days of testimony, evidence, and argument.

2. The plaintiff, Clyde Ray Spencer ("Dr. Spencer"), was represented at

1 trial by attorneys Kathleen T. Zellner and Douglas H. Johnson of Kathleen T.  
 2 Zellner & Associates, P.C. (“KTZ & Associates”). Though not appearing at trial,  
 3 Nicholas M. Curran of KTZ & Associates also represented Dr. Spencer in this case.

4 3. Dr. Spencer alleged that defendant Sharon Krause deliberately  
 5 fabricated evidence against him. Dr. Spencer alleged that defendant Michael  
 6 Davidson was liable as Defendant Krause’s supervisor.

7 4. After two days of deliberation, the jury returned a verdict in favor of  
 8 Dr. Spencer in the amount of \$9 million in compensatory damages.

9 5. Under 42 U.S.C. § 1988, a prevailing plaintiff in a civil rights case  
 10 brought pursuant to 42 U.S.C. § 1983 “should ordinarily recover an attorney’s fee  
 11 unless special circumstances would render such an award unjust.” *Hensley v.*  
 12 *Eckerhart*, 461 U.S. 424, 429 (1983).

13 6. Dr. Spencer is the prevailing party within the meaning of 42 U.S.C. §  
 14 1988. There are no special circumstances that would render an award of  
 15 reasonable attorneys’ fees and costs unjust.

16 7. In calculating the award of attorneys’ fees, the Court begins by using  
 17 the lodestar method, i.e. by multiplying the number of hours the prevailing party  
 18 reasonably expended on the litigation by a reasonable hourly rate. *Hensley*, 461  
 19 U.S. at 433; *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir.  
 20 2008). This Court is guided by eleven of the twelve<sup>1</sup> factors set forth in *Hensley v.*  
 21 *Eckerhart*, 461 U.S. at 430 n.3 and *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,  
 22

23  
 24 <sup>1</sup> The contingent nature of the representation is no longer considered. *Van Gerwen v. Guarantee Mut. Life Co.*,  
 214 F.3d 1041, 1045 n.2 (9th Cir. 2000).

1 70 (9th Cir. 1975) in determining reasonable attorneys' fees.

2 8. This Court finds that, pursuant to agreement between the parties,  
3 plaintiff's counsel reasonably expended 2,393.1 hours in this case. This Court  
4 finds that, pursuant to agreement between the parties, those hours shall be  
5 attributed in the following manner: 1161.1 to Ms. Zellner; 1051.5 hours to Mr.  
6 Johnson; and 180.5 hours to Mr. Curran.

7 9. Ms. Zellner requests an hourly rate of \$575. Mr. Johnson requests an  
8 hourly rate of \$400. And Mr. Curran requests an hourly rate of \$300.

9 10. This Court finds that plaintiff's counsel's requested rates comport  
10 with the prevailing rates in the relevant legal community and are reasonable in  
11 light of the *Hensley* factors.

12 11. This Court determines, by multiplying the agreed-upon reasonable  
13 hours expended by plaintiff's counsel by the above-stated reasonable hourly rates,  
14 that the basic lodestar figure for attorneys' fees is \$1,142,382.50.

15 12. Once the Court has determined the basic lodestar amount, the Court  
16 may "adjust the lodestar upward or downward using a 'multiplier' based on factors  
17 not subsumed in the initial calculation of the lodestar." *Van Gerwen v. Guarantee*  
18 *Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000); *Clark v. City of Los Angeles*, 803  
19 F.2d 987, 991 (9th Cir. 1986). These factors include the (1) the undesirability of  
20 the case, (2) counsel's ability to obtain the relief sought by his client, (3) the fact  
21 that counsel's involvement in the case "necessarily precluded him from accepting  
22 other employment," and (4) the fact that "it was never clear that he would receive  
23 anything for his efforts" until the jury verdict. *See* 803 F.2d at 991-92.  
24

13. This Court finds that this case was a very difficult case to prove, making it generally undesirable. Plaintiff's counsel took a great risk in accepting this case. It was never clear that plaintiff's counsel would be compensated at all until the verdict was read.

14. This Court finds that the verdict awarding \$9 million in compensatory damages was an excellent result. This Court finds that Ms. Zellner and Mr. Johnson demonstrated great skill throughout the case in achieving this result.

15. This Court finds that the demands of this case precluded KTZ & Associates from accepting potentially viable and valuable cases.

16. This Court determines that a lodestar multiplier of 1.5 is necessary and appropriate due to the difficult nature of the case, the novelty and complexity of the issues involved, the skill necessary to try the case properly and successfully, the preclusion of other employment by plaintiff's counsel due to the acceptance of this case, and the excellent results obtained.

17. Dr. Spencer is therefore entitled to an award of attorneys' fees in the amount of \$1,713,573.75, as follows:

Attorney	Hours	Rate	Lodestar		Total Fees
<b>Kathleen T. Zellner</b>	1161.1	\$575	\$667,632.50	x 1.5	1,001,448.75
<b>Douglas H. Johnson</b>	1051.5	\$400	\$420,600	x 1.5	630,900
<b>Nicholas M. Curran</b>	180.5	\$300	\$54,150	x 1.5	81,225
<b>Total</b>	2393.1		\$1,142,382.50	x 1.5	<b>\$1,713,573.75</b>

IT IS SO ORDERED.

U.S. DISTRICT JUDGE BENJAMIN H. SETTLE

/s/ Kathleen T. Zellner  
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FEES AND COSTS (C11-5424BHS) — 5

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I hereby certify that on March 7, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

Guy Bogdanoich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause	Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson
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/s/ Kathleen T. Zellner  
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